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Attorney for Defendant
Ryan Wedding

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

v.

RYAN WEDDING

Defendants.

CR NO. 08-2386-JM

**MOTION FOR ISSUANCE OF A
REQUEST FOR INTERNATIONAL
JUDICIAL ASSISTANCE TO THE
REPUBLIC OF KAZAKHSTAN**

Honorable Jeffrey T. Miller

DATE: May 15, 2009
TIME: 1:30 P.M.

TO THIS HONORABLE COURT AND TO THE ASSISTANT UNITED STATES
ATTORNEY:

Defendant Ryan Wedding, by and through his counsel of record, David R. Denis,
applies to the Court pursuant to Rule 57 of the Federal Rules of Criminal Procedure and
Title 28, United States Code §§ 1651 and 1781 for the issuance of a Request for Judicial
Assistance of the judicial authorities of the country of the Republic of Kazakhstan.

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1 Specifically, the Request for International Judicial Assistance¹ requests the judicial
2 authorities of the Republic of Kazakhstan obtain and make available certain documentary
3 and oral evidence relating to the informant in this case, Yuri Trofimov, a citizen of the
4 Republic of Kazakhstan.
5

6 **I.**

7 **Statement of Facts Relevant to the Motion for Judicial Assistance**

8 After the culmination of a multi-year investigation conducted by the Federal Bureau
9 of Investigation involving hundreds of hours of recordings of telephone calls and in-person
10 meetings between the targets and an informant named Yuri Trofimov, defendant Ryan
11 Wedding and his codefendants were arrested in San Diego on June 13, 2008. They are
12 charged with conspiracy to possess cocaine with intent to distribute, 21 U.S.C. §§ 841 and
13 846, and criminal forfeiture, 21 U.S.C. § 853.
14

15 Mr. Trofimov is an immigrant from the Republic of Kazakhstan, a former republic
16 of the USSR. Ryan Wedding was a former and current Canadian Olympian. Mr. Krapchan
17 is a Canadian citizen who emigrated from Russia. The conversations between the Mr.
18 Trofimov and Mr. Krapchan take place in the Russian language, which occur over a period
19 of several years.
20

21 As outlined in his motion for information related to Mr. Trofimov, the government
22 has still not provided any documentation of Mr. Trofimov's immigration status or of any
23 agreements evincing the benefits he is receiving, has received, or expects to receive from the
24 government in exchange for his assistance in the investigation and prosecution of Mr.
25 Krapchan, Mr. Wedding and the other co-defendant, Hasan Shirani. Based on information
26 discovered by the defense, Mr. Krapchan believed and Mr. Wedding also believes that Mr.
27
28

¹A Proposed Request for International Judicial Assistance is attached as an exhibit to this motion.

1 Trofimov was involved in, accused of or convicted of fraud-related crimes when he was
2 living in Kazakhstan. Mr. Wedding further believes that Mr. Trofimov may have fled or
3 been expelled from the Republic of Kazakhstan as a result of these offenses, causing him to
4 file for asylum in this and other countries.
5

6 Mr. Wedding remains in custody and his attorneys have no way to conduct an
7 investigation into these activities without the assistance of government officials in the
8 Republic of Kazakhstan. An investigator in Kazakhstan has indicated that these "letters
9 rogatory" would be highly beneficial in obtaining the information requested. These
10 officials are in a position to provide the defense with official documents and personal
11 testimony related to the informant's criminal activities there. The defense believes it is
12 important to secure such information as it likely will provide powerful impeachment
13 material at trial. The credibility of Mr. Trofimov will play a central role at trial, since it
14 is anticipated he will be the government's key witness who will provide context for and
15 interpret recorded conversations regarding the other co-defendants and Mr. Wedding as
16 well as relate the contents of unrecorded conversations between the defendants and
17 him.
18
19

20 II.

21 Argument

22 *A. The District Courts Have the Power to Issue Requests for Judicial Assistance*

23
24 Requests for judicial assistance, or "letters rogatory," are formal requests from
25 a court of one nation to the judiciary of a foreign nation, enlisting the assistance of the
26 latter in obtaining evidence which is beyond the jurisdiction of the requesting court.
27
28 The execution of a request for judicial assistance by the foreign court is based, in the
absence of a treaty, on a comity between nations at peace and as such is discretionary

1 in nature. *Janssen v. Belding-Corticelli* 84 F.2d 577, 579 (3rd Cir. 1936), *United States*
 2 *v. Zabady*, 546 F. Supp. 35, 39 (M.D. Pa. 1982).

3 The power of federal courts to issue such requests is derived from 28 U.S.C. §
 4 1781, *United States v. Reagan*, 453 F.2d 165, 171-173 (6th Cir. 1971), and from the
 5 court's "inherent" authority. *United States v. Staples*, 256 F.2d 290, 292 (9th Cir. 1958),
 6 *De Villanueva v. Morning Journal Ass'n*, 206 F. 70 (S.D.N.Y. 1913). The use of §
 7 1781 to gather evidence to assist a criminal defendant has been recognized by the
 8 courts. *E.g. United States v. Sensi*, 879 F.2d 888, 898 (D.C. Cir. 1989) (pointing out
 9 that the defendant has the ability to "ask[] the district court to issue letters rogatory
 10 addressed to a court of Kuwait seeking its assistance in gathering evidence from
 11 witnesses residing there"). The authority to seek official assistance between the
 12 judiciary of independent nations is based on the principal of international cooperation
 13 and reciprocal comity. Thus, the federal courts also are authorized to accept and
 14 execute the requests of foreign tribunals, 28 U.S.C. § 1782. *In re Request for Judicial*
 15 *Assistance from Seoul*, 555 F.2d 720 (9th Cir.1977).

16
 17 ***B. The Procedure for Issuance of a Request for Judicial Assistance Is by***
 18
 19 ***Application to the Requesting Court***

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 21 Although the Rules of Criminal Procedure do not provide procedures for the
 22 issuance of requests for judicial assistance, Rule 57 of the Federal Rules of Criminal
 23 Procedure provides:
 24

25 In all cases not provided for by rule, the district judges and magistrates
 26 may regulate their practice in any manner not inconsistent with these rules
 27 or those in the district in which they act.
 28

Further, "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a).

The Court is therefore authorized under the above provisions to implement the letter rogatory provisions of Title 28, United States Code, § 1781. This provision provides, in part:

(a) The Department of State has power directly or through suitable channels...

(b) to receive a letter rogatory issued, or request made, by a tribunal in the United

States, to transmit it to the foreign of international tribunal officer, or agency to whom it is addressed and to receive its return after execution. *Id.*

An application for a request for judicial assistance seeking only documents is similar to a request for a subpoena duces tecum, which a party may obtain without leave of court and without notice to the adverse party. *See* Fed. R. Crim. P. 17(c). Documentary and other evidence is property obtainable via a request for judicial assistance in a criminal case. *See United States v. Reagan*, 453 F.2d 165 (6th Cir. 1971).

C. Mr. Wedding Needs the Assistance of the Republic of Kazakhstan to Prepare his Defense.

As stated above, Mr. Wedding believes that officials within the Republic of Kazakhstan will be able to provide him with important impeachment material regarding the informant, Yuri Trofimov, whose testimony and credibility will be a central component of the case. Mr. Wedding and his attorneys have no independent ability to secure any documents or testimony from these officials. An investigator in Kazakhstan contacted by the Defense has indicated that these letters rogatory would be highly beneficial in obtaining the information requested and securing cooperation from these officials. The prosecution has

1 not voluntarily provided any *Brady* material on Mr. Trofimov, and it is unlikely that the
 2 government maintains full documentation of his illegal activities in Kazakhstan. Recently,
 3 the government has also admitted that this was a viable means to obtain the desired
 4 information.² This court has gone even one step further and discussed a case in the criminal
 5 context of a 1983 action on the issue of *qualified immunity of state actors* where the
 6 investigating agency did not disclose information to the prosecution, the Ninth Circuit held
 7 this did not insulate the prosecution from its obligation under *Brady* or afford the state actor
 8 immunity under §1983³.

11 For these reasons, Mr. Wedding respectfully urges the Court to grant this motion and
 12 issue a Request for International Judicial Assistance to the Republic of Kazakhstan. The
 13 Court's assistance, though no guarantee of cooperation, will go a long way toward securing
 14 relevant evidence and testimony in the most efficient manner, which will further the Court's

16 ² Transcript Excerpt from Hearing dated 12/19/2008 (pg. 11, line 13-25)

17 Mr. Guiterrez: No, your Honor. We fully intend to -- for lack of a better term, we have nothing to
 18 hide. I will personally with the agent present talk to the informant and ask, make inquiries. If he says there isn't
 19 anything, I think that's where my inquiry will stop at that point. If Mr. Pancer gives me other information or
 20 documentation that would be contrary, I'd be more than happy to pursue that. We do not have the relevant
 treaty with Kazakhstan. I made inquiries, what I can do. ***I know counsel has made essentially a letters
 rogatory request in his underlying motion. I don't know how far that's gone, but I understand that's a
 viable method for him to pursue. But I'm more than happy to do what I can as far as asking.***

21 ³ Transcript Excerpt from Hearing dated 12/19/2008 (pg. 12, line 9 to pg. 13, line 25)

22 The Court: You're aware of what your obligations are. There's a very interesting recent
 23 Ninth Circuit case, by the way. I don't think it was within the context of a criminal case, although it was -- it
 24 involved the duties of an investigating agency who had possession of exculpatory material to provide that
 material to the prosecutor as the prosecutor was prosecuting a criminal case, and it comes up within the
 context, of all things, a federal civil rights case where an individual was incarcerated for a ten-year period of
 time, then there's a finding of factual innocence, and it comes to light that the investigating agency did not
 25 provide information to the prosecution team, the prosecution team throws up its hands and says we don't have
 any control over this, this was basically an investigation aspect of the case, and the Ninth Circuit held that does
 26 not insulate the prosecution from its obligations under *Brady*. And ultimately the question arose in a qualified
 immunity context under 1983, and the Ninth Circuit said qualified immunity would not protect the individual
 27 state actors in that case. Interesting case. But I think it speaks to the larger obligation. Do you have to engage
 in a withering cross-examination and deposition and obtain a blood oath from a confidential informant that that
 28 confidential informant has told you absolutely everything? You know, probably not, but I think there is a
 threshold obligation to make reasonable inquiry to satisfy yourself, that is, for the government to satisfy itself
 that it has obtained everything that would be fairly discoverable under a *Brady* rationale. So you've said the
 right things. You've -- I don't have any doubt that you're aware of your obligations and that you'll continue to
 provide any discovery that should be forthcoming.

1 goals of promoting justice, protecting a defendant's right to mount a defense, and *avoiding*
2 *unnecessary delay*.

3
4 **III.**

5 **Conclusion**

6 For the above-stated reasons, Mr. Wedding respectfully urges the Court to grant his
7 motion for issuance of a Request for International Judicial Assistance to the Republic of
8 Kazakhstan. Mr. Wedding also requests the government provide some identifying
9 information such as Mr. Trofimov's **date of birth**, Kazakhstan **ID card or number** and/or
10 any other identifier that would assist in obtaining the requested information.
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12
13 DATED: April 24, 2009

14 Respectfully Submitted,

15 S/ DAVID R. DENIS

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17 _____
David R. Denis
Attorney for Defendant
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PROOF OF SERVICE

I declare that:

I am a citizen of the United States and employed in the city of Los Angeles, CA. I am over eighteen years of age and not a party to the action. My business address is 707 Wilshire Blvd., Suite 3600, Los Angeles, CA 90017.

On April 24, 2009, I personally served the following documents:

Motion for the Issuance of a Request for International Judicial Assistance to the Republic of Kazakhstan

on the below attorneys by electronic filing:

Assistant United States Attorney Orlando Gutierrez

Counsel for all co-defendants

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on April 24, 2009 at Los Angeles, CA.

S/ DAVID R. DENIS

David R. Denis
Attorney for Defendant